



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 26, 1995

Mr. Marshall Neill
Superintendent
Whitehouse Independent School District
106 Wildcat Drive
Whitehouse, Texas 75791

OR95-230

Dear Mr. Neill:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31814.

The Whitehouse Independent School District (the "district") settled a lawsuit filed against it by an employee who alleged a supervisor had sexually harassed her. The settlement agreement signed by the district contains a confidentiality clause against disclosing the settlement terms. The district has received a request for information about the settlement from the *Tyler Morning Telegraph*. You contend this information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

Section 552.103(a) provides that information is excepted from disclosure if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

This office has held that the section 552.103(a) provision concerning "settlement negotiations" does not extend to the final terms of a settlement agreement. Open Records Decision No. 245 (1980) at 2.

Section 552.107(2) provides that information is excepted from disclosure if "a court by order has prohibited disclosure of the information." In Open Records Decision No. 415 (1984) at 2, this office determined that a court order directing that settlement terms be kept confidential would except the information from disclosure under section 552.107(2):

The order of dismissal in this case, which was signed by the judge of the 103rd District Court, expressly provides that "the terms of the settlement shall not be disclosed by the parties or their attorneys." Although we have grave doubts as to whether the judge was authorized to issue an order of this nature, the fact remains that the order is extant. In light of this, we must reluctantly conclude that the requested materials are excepted from required disclosure by [section 552.107(2)]. [Emphasis added.]

However, our review of the documents at issue indicates that there is no court order requiring the agreement to be kept confidential.

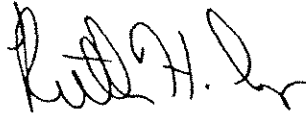
Chapter 552 of the Government Code presumes that all information collected, assembled, or maintained by or for a governmental body as part of its transaction of official business is open to the public. Gov't Code §§ 552.006, .021. Section 552.022(3) specifically provides that information "relating to the receipt or expenditure of public or other funds by a governmental body" is generally public. A governmental body may not overrule these provisions merely by agreeing to keep information secret. Attorney General Opinion JM-672 (1987) at 2. Absent express statutory authority, a governmental body has no authority to make an enforceable promise or agreement to withhold information from disclosure. Attorney General Opinion H-258 (1974) at 3.

In any event, the settlement agreement signed by the district provides that the terms of the settlement be kept confidential "*except as required by law.*" As indicated above, the information requested by the newspaper is subject to required public disclosure under chapter 552 of the Government Code. The requested information must therefore be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written in a cursive style.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/LRD/rho

Ref.: ID# 31814

Enclosures: Submitted documents
Open Records Decision No. 114 (1975)

cc: Mr. or Ms. A. J. Giametta
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